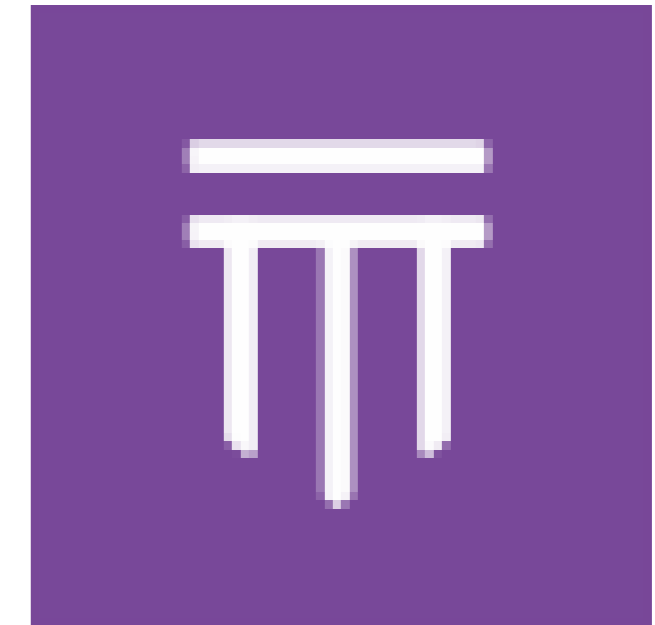


Brno, 13 October 2021

International criminal court & regional actors



JUSTIN
Judicial Studies Institute
Masaryk University

Katarína Šipulová



International criminal law (recap)

- Crime under international law
 - Legal concept
 - Article 1 [Convention on prevention and punishment of the crime Genocide 1948](#)
 - [Principles of International Law recognized by Nuremberg Tribunal Charter 1950](#)
 - [Draft Code of Crimes against the Peace and Security of Mankind 1996](#)
- Nuremberg Charter: 3 categories of crimes
 - Crimes against peace
 - War crimes
 - Crimes against humanity
- International ad hoc tribunals: grave violations of international law
- International crime v crime under international law



International criminal law (recap)

- **Crime under international law**
 1. **Crimes against peace**
 - UN Charter, A 2.4 prohibition of the use of force
 - ICJ: Military and Paramilitary Activities in and against Nicaragua 1986
 - Nuremberg, Tokyo, crime of aggression
 2. **Grave violations of humanitarian law**
 - Customary law
 - Discussed in International Court of Justice case: [Barcelona Traction](#)
 - A common article 3 of Geneva convention (humanitarian minimum) prohibiting
 - Attacks on life and health, murder, torture, mutilation
 - wounded, sick and shipwrecked be collected and cared for
 - It grants the ICRC the right to offer its services to the parties to the conflict.
 - It calls on the parties to the conflict to bring all or parts of the Geneva Conventions into force through so-called special agreements.
 3. **Crime of genocide/against humanity**
 - Widespread systematic attack against civil population
 - Intention to exterminate protected group
 4. **War crimes**
 - Existence of an armed conflict



International Criminal Court

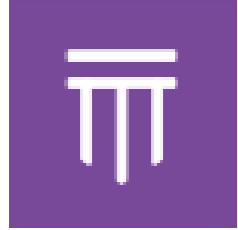
- The idea immediately after WW2
- 1947 Nuremberg Laws (ILC)
- 1954 first attempt – lack of consensus, put ad acta
- Committee for International law – proposal in 1994
- 1996 Preparatory Committee of the UN General Assembly tasked to prepare a statute
 - **PROBLEMS**
 - Diverse preferences of states
 - Extent of jurisdiction
 - Czechia supports stronger competences of the court
- International conference in Rome, 15-17 July 1998
 - ICC Statute
 - Signed by 120 of 148 states
 - Effective ratification: 60 countries, achieved on 11 April 2002
 - Today: 123 contracting parties
- Drawbacks:
 - Speed
 - Agenda linkage
 - diplomacy



International Criminal Court

- COMPOSITION
 - Article 34: four bodies
 - Presidency
 - Three divisions
 - Appeal
 - Trial
 - Pre-Trial
 - The Office of the Prosecutor
 - The Registry
 - Article 36.1: minimum 18 judges
 - Selection: high moral quality, impartiality, integrity, the qualifications required in their respective states for appointment to highest judicial offices
 - Competence in criminal law and procedure (experience as judge, prosecutor, advocate)
 - Competence in relevant areas of IL
 - Every state nominates 1 candidate (not necessarily a national)
 - Election: 2 lists of candidates according to qualifications
 - Election by secret ballot at a meeting of the Assembly of States Parties
 - No two judges may be nationals of the same state
 - Consideration on representation of principal legal systems, geographical representation, gender
 - 9 years, cycle by 3
- The Office of the Prosecutor: a 42: separate independent body of the Court
 - Responsible for receiving referrals and information on crimes within the jurisdiction of the ICC, examining them, conducting investigations and prosecutions before the Court





ICC: Jurisdiction (Article 5)

- The crime of genocide
- Crimes against humanity
- War crimes
- The crime of aggression
 - Inserted by resolution 6 of 11 June 2010
 - Invasion or attack by the armed forces of a state of the territory of another state, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force
 - Bombardment by the armed forces of a state against the territory of another state
 - The blockade of the ports or coasts
 - Attack by the armed forces on the land, sea, or air forces, or marine and air fleets
- TIME: crimes after 1 July 2002



ICC - Controversies

- Initiation of investigation
 - Referral by a treaty party (information to Prosecutor)
 - Referral by UN Security Council (Chapter VII)
 - Prosecutor on his own motion (proprio motu)
A15 (Kenya)
- Conditions:
 - Ratification of the statute
 - Competence of the court acknowledged (ad hoc) by at least 1 of the states
 - Principle of complementarity





ICC - Controversies

- Execution of punishments
 - Part 7.
 - Imprisonment (life or 30 years)
 - Financial punishment
 - Forfeiture of property etc.
 - Part 10
 - List of countries willing to take convicted
 - ICC oversees
 - Conditions: based on national legal order



ICC - Controversies

- Cooperation with member and third countries
 - Part 9.
 - Implementation of international commitments
 - Core responsibilities
 - Cooperation on investigation and prosecution
 - Compatibility of national laws and cooperation
 - It cannot give commitments to third countries, but it can be asked for help ad hoc
 - Arrest and surrender
 - Rule of specialty
 - Domestic immunities not applicable
- Generally, state can refuse the cooperation only when hands over information on the threat to its own security



ICC - Controversies

- Cooperation with third countries: USA
 - Clinton's role
 - BIAS – bi-partisan agreements on immunity (Article 98 of the Statute)
 - ASPA – the right of the President to take soldiers from the ICC jurisdiction
- **Criticism**
 - Conflicting authority outside of a classical constitutional system of compliance enforcement
 - Elastic jurisdiction
 - Lack of definitions of crimes in the Statute
 - No act of terrorism
 - Fear of prosecution of their own soldiers – My Lai?
 - Too independent Prosecutor
 - Ineffective
 - Outside of UN
 - Violation of the traditional concept of state sovereignty
 - Due process (no jury trials, retrials allow errors of fact, hearsay evidence, no bail...)



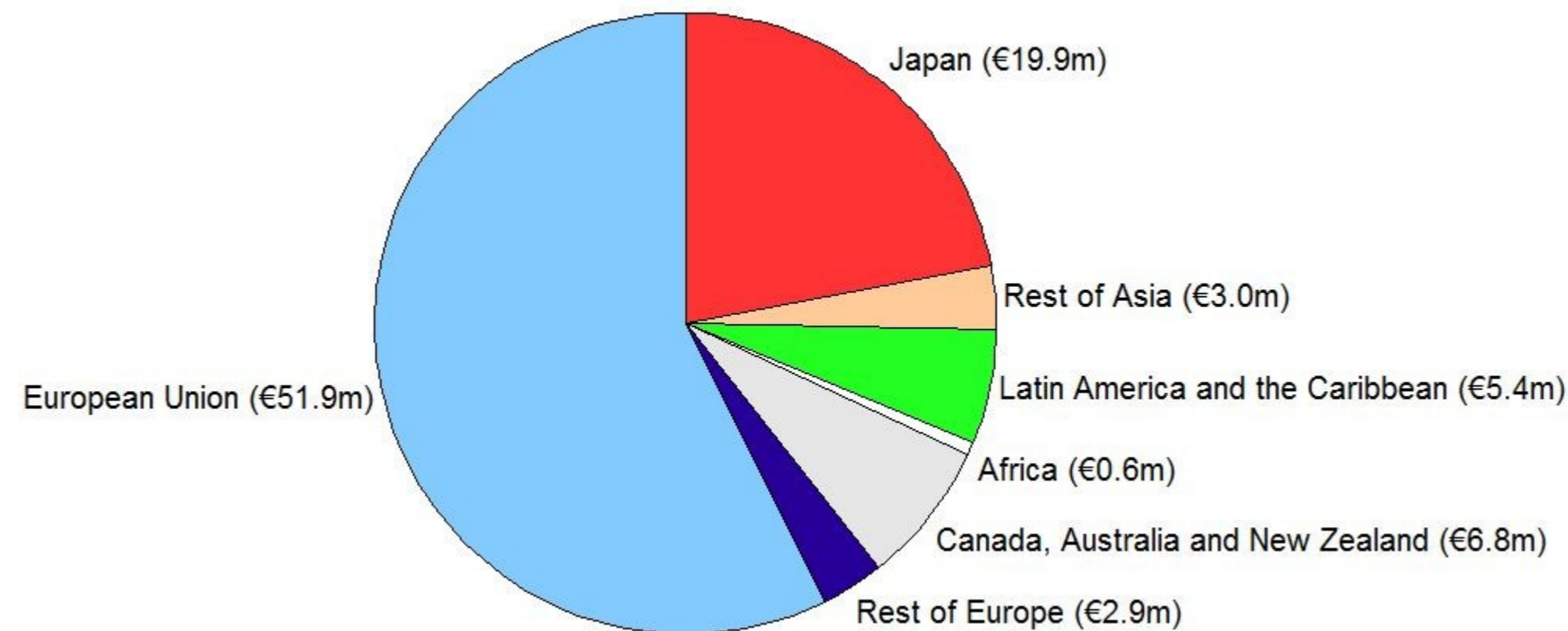
ICC - Controversies

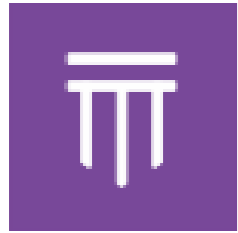




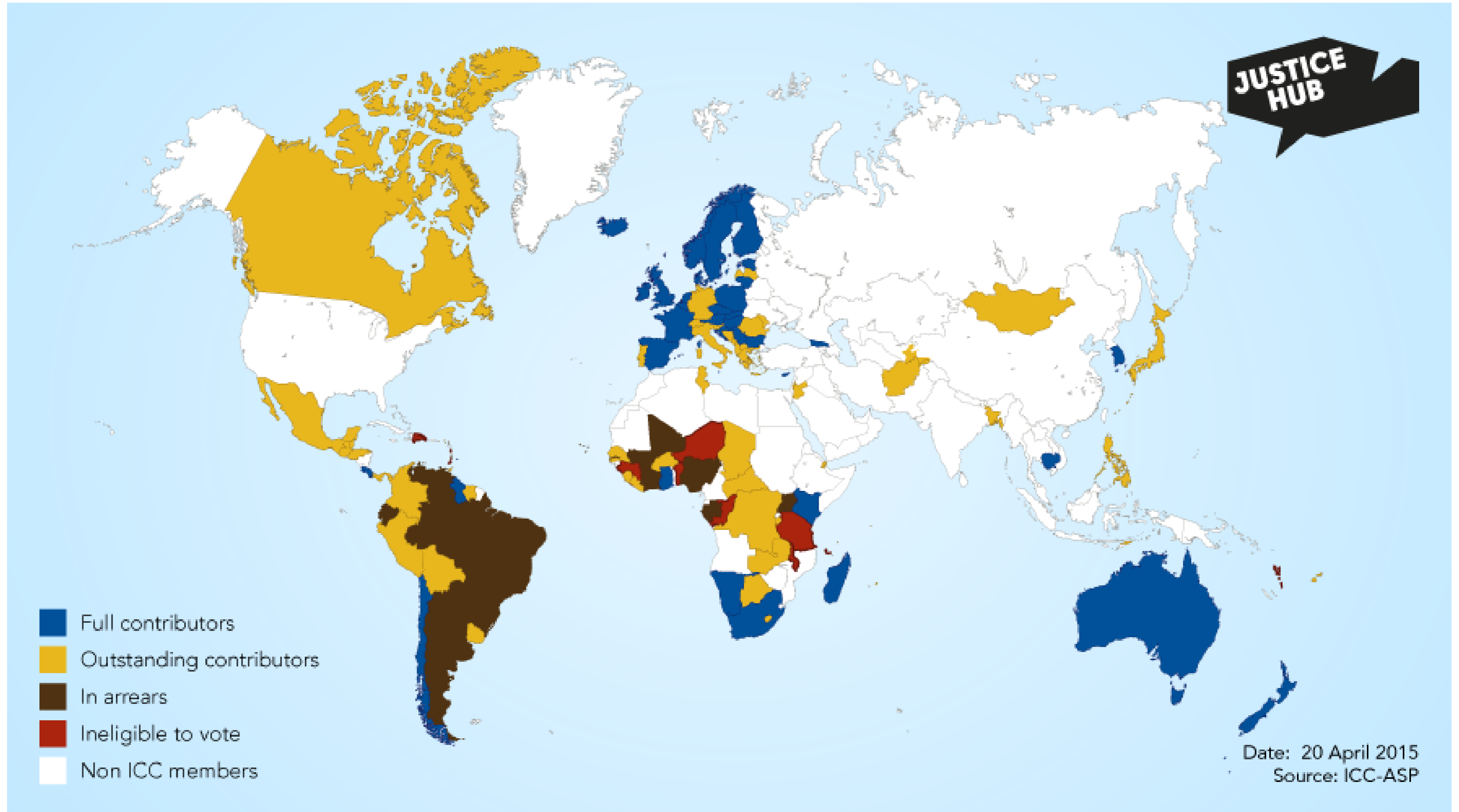
ICC - Controversies

- Finances: contributions from state parties (same as UN contributions system: country's capacity to pay / national income and population)
- Maximum: 22% of Court's budget (Japan in 2008)





ICC - Controversies





ICC - Controversies

- Western imperialism:
 - ICC punishes only leaders from small, weak states while ignoring crimes committed by richer and more powerful states
 - Kenya – withdrawal of support (AU summit 2013)
When Omar al-ashir visited several African countries, he was not arrested despite the ICC warrant
Ivory Coast opted not to extradite the first lady Simone Gbagbo and try her at home
- AU: withdrawal proposal 2015



ICC - Controversies

- Czech Republic enters as the very last EU member and candidate country
 - 1 October 2009
 - 10 year long journey to ratification (signatory from 1999)

Constitution and Rome Statute

1. immunities (President, Senators, Constitutional justices)
2. Presidential amnesties
3. X extradition of nationals



ICC – Biggest cases

- **Prosecutor:** investigations in 13 situations
- Most famous:
 - Libya
 - Al-Bashir & Darfur
 - Côte d'Ivoire
 - Palestine
 - Kenya
 - Bangladesh
 - Lubanga (DRC)
- **Investigations: Colombia, Guinea, Nigeria, the Philippines, Ukraine, Bolivia, Venezuela**
- **45 indicted people, 19 ongoing cases, 12 fugitives**



ICC – Prosecutors

Ocampo - Bensouda - Khan (June 2021)



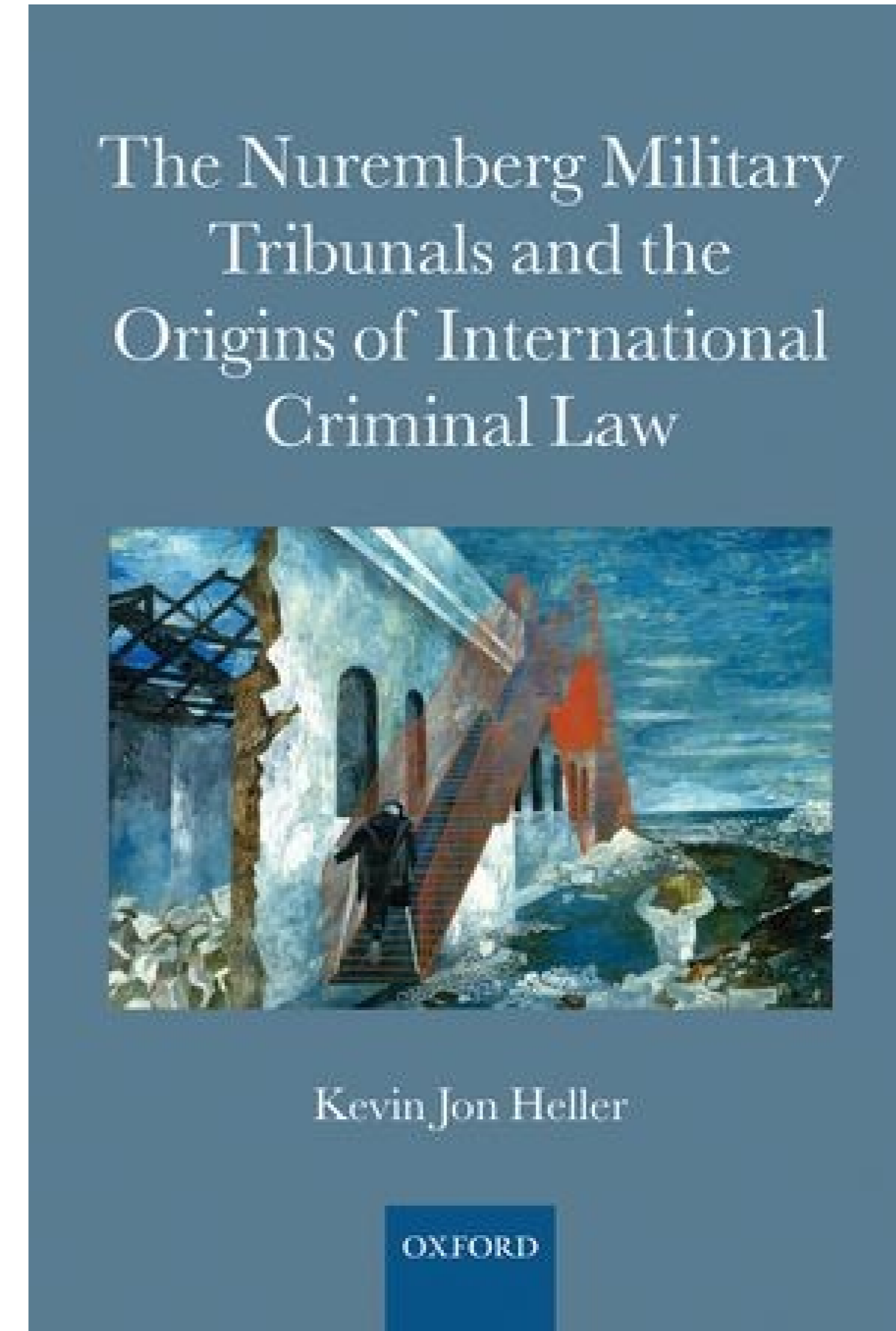


Recommendation

Kevin Jon Heller:

The Nuremberg Military Tribunals

and the Origins of International Criminal Law





ICC – Biggest cases

Lubanga

- First charged to stand before the ICC
- War crime of hiring child soldiers
- Activism of the Prosecutor?





Council of Europe

European Court of Human Rights

European Convention on Human Rights

Entry conditions

- democratic constitution
- Hungary: constitution of 1949?
- Existence of a Constitutional review
- Compliance and compatibility of national legal order with the Convention
- Reforms of judiciaries, depoliticization, etc.
- Why?
 - Democratization
 - integration



European Court of Human Rights

Post-transition problems

- Prosecution of leading authorities of totalitarian regimes
- External control of de-communisation
 - Lustration
 - Restitutions of property
 - Privatisation processes
 - Racial discrimination



European Court of Human Rights

Criminal Accountability

- *Streletz, Kessler, Krenz v Germany*
- *K.-H.W. v Germany*
- *Kononov v Latvia*
- *Korbely v Hungary*
- *Kolk and Kislyiy v Estonia*
- *Bazorkina v Russia*



European Court of Human Rights

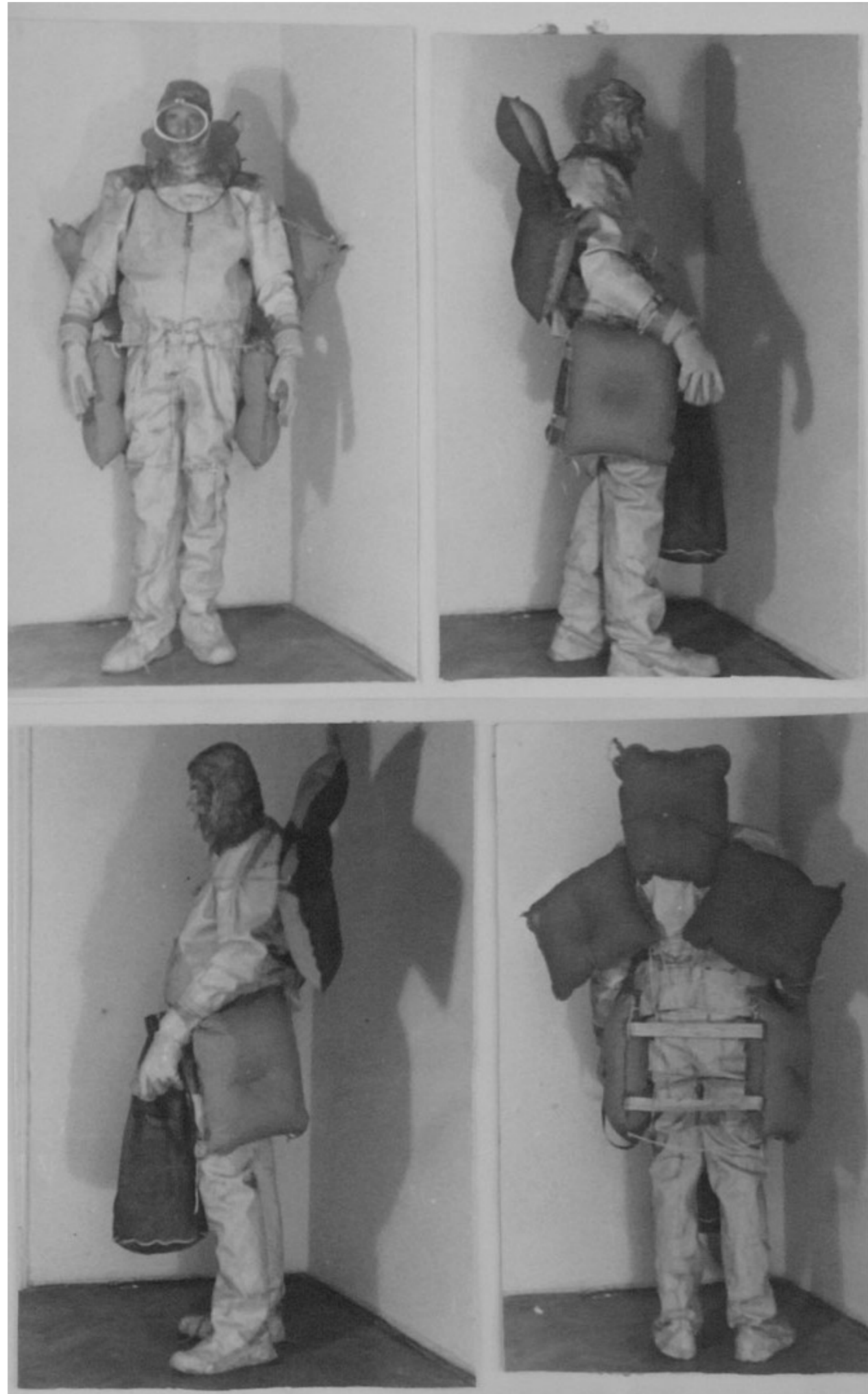
Streletz, Kessler, Krenz





European Court of Human Rights

Streletz, Kessler, Krenz





European Court of Human Rights

Bazorkina v Russia (2006)

- Russian national, lodging the complaint on behalf of her son who left for Chechnya in 1999
- On 2 February 2000: interrogation captured by TV news (Russian officer, capturing of Yermolovka village – finish off instruction)
- August 2000: applicant informed her son is not held in any prison in Russia
- November 2000: military prosecutor decided not to open the criminal investigation of disappearance
- 2001: application to the ECtHR
- Detained in 2/2000, handed over to MinJus transportation, did not arrive to any pre-trial detention centre



The Inter-American HR Regime

- The American Declaration of the Rights and Duties of Man
 - Adopted by the GA of the Organization of American States in April 1948
 - Not binding
 - Crucial era: 70s-80s (democratization)
- The 1969 American Convention on Human Rights
 - Adopted by the GA of the Organization of American States in April 1948
 - In force from 1978
 - Ratified by 24 countries
- Inter-American Democratic Charter 2001



The Inter-American HR Regime and TJ

- *Velásquez Rodríguez v. Honduras* (1988):
- The countries are obliged to oversee compliance with HR and fight against impunity with any means possible

- *Amnesties*
- *Barrios Altos v Peru* (2001):
two acts on amnesties (Alberto Fujimori awarded amnesty to himself) – contrary to right of victims to a fair trial and articles 1 and 2 of the Convention

- *Almonacid v Chile*
- Act on :amnesties regarding the Pinochet regime of 1978 need to be abolished.



The Inter-American HR Regime and TJ

- Overall, no consistent approach towards the transitional justice
- Paraguay: Alfredo Stroessner regime:
 - Historical memory, establishment of the TRC – willingness to address TJ questions domestically
- TRC in Chile
- Even if collecting the evidence on HR violations, it does not substitute the court and fair trial
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Katarína Šipulová
katarina.sipulova@law.muni.cz
Masaryk University

Thank you for your
attention